

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 RA WOLLENBERG and GERRY LEHRBURGER,
5 *Petitioners,*

6
7 vs.

8
9 JACKSON COUNTY,
10 *Respondent.*

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12 LUBA No. 2004-199

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14 FINAL OPINION
15 AND ORDER

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17 Appeal from Jackson County.

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19 Ra Wollenberg and Gerry Lehrburger, Ashland, represented themselves.

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21 Steven R. Rinkle, Assistant County Counsel, Medford, represented respondent.

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23 DAVIES, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
24 participated in the decision.

25
26 REMANDED

 01/27/2005

27
28 You are entitled to judicial review of this Order. Judicial review is governed by the
29 provisions of ORS 197.850.

MOTION FOR VOLUNTARY REMAND

The county moves for a voluntary remand, on the basis that “respondent will address all assignments of error raised in the Petition for Review.” Motion for Voluntary Remand 1. Petitioners appear not to object to the voluntary remand *if* the county agrees to conduct a *de novo* hearing on remand.

“The central issues in Petitioners’ appeal were that the county decision was a land use decision pursuant to ORS 197.015(10)(A) and that petitioners were entitled to written notice of the County’s decision and further that a *de novo* hearing on this matter was required pursuant to ORS 215.416(11). Therefore, the specific context (details) of Petitioners’ Assignments of Error are not, in and of themselves, what need to be addressed upon remand, but rather that a *de novo* hearing be held on this matter which would allow any and all issues to be addressed pursuant to the language of the above referenced statutes.” Response to Respondent’s Motion for Voluntary Remand 1.

While the county has acknowledged that it will address all of the assignments of error raised in the petition for review, it has not, to our knowledge, agreed to conduct a *de novo* hearing. Therefore, we must understand petitioners to object to the motion for voluntary remand.

The general principle that LUBA applies where a local government requests a voluntary remand, and a petitioner opposes the request, is stated in *Angel v. City of Portland*, 20 Or LUBA 541, 543 (1991):

“The legislature has clearly expressed an intent that appeals of land use decisions be thoroughly and expeditiously determined by the Board. ORS 197.805 and 197.835[(11)](a). Granting a local government request for remand of an appealed decision, over petitioner’s objection, is consistent with this policy of expeditious and complete review only if the local government demonstrates that the proceedings on remand will be capable of providing the petitioner with everything he would be entitled to from this Board. If the local government’s request for remand of its decision does not demonstrate that *all* of the allegations of error made by petitioner in the petition for review will be addressed on remand, it is inappropriate to remand the decision over petitioner’s objections.” (Citations and footnote omitted; emphasis in original.)

1 One of petitioners’ assignments of error is that the challenged decision is a “permit”
2 decision and that the county was required to provide notice and a hearing.¹ While the county
3 has agreed to address that issue, there is no guarantee that the county will agree with
4 petitioners that the challenged decision is a “permit” for purposes of ORS 215.416. The
5 relevant standard requires that the county address the appeal issues, not that it necessarily
6 concedes those issues.

7 Accordingly, the county’s motion for voluntary remand is granted.

8 The county’s decision is remanded.

¹ Petitioners’ other assignments of error can be characterized as follows: (1) that the county’s decision was a “land use decision” subject to LUBA’s jurisdiction; and (2) that the county misconstrued the applicable law.